Since the purpose of all these statutes is to protect citizens in transaction with foreign corporations, the courts almost unanimously deny the corporation the right to set up its violation of statute to defeat a recovery when sued on contract by a citizen.[15] The general expression that the contract is "void," but that the corporation is estopped to deny its validity, would seem to mean no more than that it is voidable at the option of the other party. A few courts allow the corporation to recover on the ground that the other party is estopped.[16] These courts, however, are decidedly in the minority.[17] To invoke the doctrine of estoppel is believed to be entirely unnecessary as the decisions should more properly turn solely upon the legislative intent as expressed in the statute.

PRESUMPTIONS AS TO UNEXPLAINED ALTERATIONS IN WILLS.—A recent case holds that where an unexplained alteration appears on the face of a will it is presumed to have been made prior to the execution of the will. *In re Easton's Will,* 145 N. Y. Supp. 373. The court bases its decision on the ground that, in the absence of such a statute as the English Wills Act of 1873,[1] the common law of the State, as derived from the common law of England as it existed prior to the Revolution, should govern. The court further contends that by the common law of England, prior to the Revolution, unexplained alterations in wills were presumed to have been made before execution, and the burden of proof was on the party who sought to have the alteration excluded to show that it was made after the execution of the will. The decision is based on a *dictum* in the case of *Crossman* v. *Crossman,*[2] referred to as a leading case on the subject. In that case a will was executed in duplicate, and in one of the copies the name of one of the executors had been left out in copying. The interlineation was made at the bottom of the instrument, and was necessary to make it a duplicate. In the opinion the court said, "Where an interlineation, fair upon the face of an instrument, is entirely unexplained, we do not understand that there is any presumption that it was fraudulently made after the execution of the instrument." The opinion of Judge Brown in *the Matter of Conway,*[3] also referred to in the principal case as authority for this doctrine, was a dissenting opin-

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[15] Pennypacker *v.* Capital Ins. Co., 80 Iowa 56, 45 N. W. 408, 20 Am. St. Rep. 395, 8 L. R. A. 236; Fisher *v.* Traders Ins. Co., 136 N. C. 217, 48 S. E. 667; Young *v.* Gaus, 134 Mo. App. 166, 113 S. W. 735; Showen *v.* Owens Co., 158 Mich. 321, 122 N. W. 640.

[16] La France Engine Co. *v.* Mt. Vernon, *supra.*

[17] See American Amusement Co. *v.* East Lake Chutes Co., 174 Ala. 526, 56 So. 961.

[1] 1 Vict., c. 26, § 21, provides that any interlineation made in a will after its execution shall be of no effect unless re-executed or signed by the testator and the witnesses opposite or near to the interlineation.

[2] 95 N. Y. 145.

[3] 124 N. Y. 455, 26 N. E. 1028.

ion, and therefore of no great authority. The earlier cases in New York followed the doctrine that alterations and interlineations in a will are presumed to have been made after execution, making it necessary for one seeking to establish such a will to overcome the presumption by proof that the alterations were made prior to the time of execution.[4] It cannot be controverted, however, that the modern tendency of the New York courts has been to presume that alterations and interlineations were made prior to the execution of a will.[5]

The English cases cited by the court, decided prior to the passage of the Wills Act of 1837, do not fully substantiate the contention that prior to that date interlineations were presumed to have been made prior to execution, on the principle, "*Præsumuntur omnia rite acta esse.*"[6] It is now the settled law of England that unexplained alterations will be presumed to have been made subsequent to the execution of the will.[7] There is a reason for the difference in the presumption in the case of alterations in wills and in deeds. In the latter case it is a wrongful act for anyone to alter the instrument after its execution, and under the presumption of innocence until guilt is proved, the courts have held that alterations or interlineations are presumed to have been made before execution; but in the case of alterations in wills, it is no crime for the testator to change his mind, but is his right. Hence the difference in the presumption.[8]

In this country three views may be said to exist. For a long time the Pennsylvania courts, following the modern tendency of

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[4] Van Buren *v.* Cockburn, 14 Barb. (N. Y.) 118; Re Lang, 9 Misc. 521, 30 N. Y. Supp. 388; Re Barber, 92 Hun. 489, 37 N. Y. Supp. 235. See also Re Carver, 3 Misc. 567, 23 N. Y. Supp. 753.

[5] Re Dwyer, 29 Misc. 382, 61 N. Y. Supp. 903; Crossman *v.* Crossman, 95 N. Y. 145.

[6] In Benson *v.* Benson, L. R. 2 P. & D. 172, a will was executed before the passage of the Wills Act, and at the death of the executor after the passage of the act, it was found with his signature crossed out. In the absence of evidence that the signature was crossed out before the passage of the act, the court held that it could not presume the alteration to have been made before the passage of the act, and the will was sustained. If the crossing out of the signature had been done before the passage of the act the will would have been void.

The case of Banks *v.* Thornton, 11 Hare 176, also cited by the court, held that such alterations would be sustained, after the will had been admitted to probate, as the decision of the court admitting the will to probate was final.

In the Goods of Streaker, 4 Sw. & Tr. 192, is a case deciding that unattested alterations in a will made before the Statute of Wills was enacted were presumed to have been made before that act came into operation.

[7] Cooper *v.* Bockett, 4 Moore P. C. 419; Greville *v.* Tylee, 7 Moore P. C. 320; Doe *v.* Catomore, 16 Q. B. 745; Doe *v.* Palmer, 16 Q. B. 747; In the Goods of Adamson, L. R. 3 P. 253.

[8] 1 REDFIELD, WILLS, 4 ed., 316. "The act is ambulatory during the life of the testator, and it is therefore not unreasonable or unnatural to presume, that any such alterations may have been made by him with a view to the ultimate republication of the instrument."

the New York courts, refused to follow the English doctrine, and it was thought settled that in Pennsylvania alterations in a will would be presumed to have been made prior to its execution.[9] The same view is taken by the Alabama courts.[10] But in 1909 the Supreme Court of Pennsylvania, without making any reference to the prior Pennsylvania cases, handed down a decision in direct conflict with the older decisions.[11] The second view is taken by the courts in Massachusetts, where it is held that where the alterations are unexplained no presumption at all will arise, but in order to make them valid, the party who expects to benefit by the probate of the will, or by the alterations after the will has been admitted to probate, must show that the alterations were made before the execution of the will.[12] It is interesting to note that it has also been held in Massachusetts that no presumption arises as to alterations in the case of deeds.[13] The third view is that alterations, in the absence of proof to the contrary, are presumed to have been made after execution, in accordance with the doctrine upheld by the English courts. This is the true view, and is sustained by the weight of authority in this country.[14] The courts base their decisions on the same grounds that the English courts do, namely, that proof of a will stands upon a different footing from the proof of a deed, and that a testator may, and often does, change his will after its execution.[15]

In this discussion the question of the presumption after the will has been admitted to probate has not been considered. The probate is an adjudication of the due execution, and the probate establishes, *prima facie,* the validity of the will. Hence, after probate, it is generally held that unexplained alterations or interlineations are presumed to have been made prior to the execution, and the burden of proof is on him who questions the validity of the will.[16]

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[9] Wikoff's Appeal, 15 Pa. St. 281, 53 Am. Dec. 597. See note 17 L. R. A. (N. S.) 184, 186.

[10] See Martin *v.* King, 72 Ala. 354.

[11] In Re Teed's Estate, 225 Pa. St. 633, 74 Atl. 646.

[12] Wilton *v.* Humphreys, 176 Mass. 253, 57 N. E. 374; O'Connell *v.* Dow, 182 Mass. 541, 66 N. E. 788. In the latter case, quoting from the former case, it was said, "There is no presumption of law in a case of this kind as to the time when the disputed words were written. The question is one of fact to be determined on all the evidence."

[13] Ely *v.* Ely, 6 Gray (Mass.) 439.

[14] Toebbe *v.* Williams, 80 Ky. 661; In Re Wilson, 8 Wis. 171; In Re Teed's Estate, *supra.* See, also, Ward *v.* Wilcox, 64 N. J. Eq. 303, 51 Atl. 1094.

[15] See 1 JARMAN, WILLS, 6 ed., 151, and note.

[16] Linnard's Appeal, 93 Pa. St. 313, 39 Am. Rep. 753; Scott *v.* Thrall, 77 Kan. 688, 95 Pac. 563.